

**QLDC Council
23 March 2018****Report for Agenda Item 3****Department: Finance & Regulatory****Navigation Safety Bylaw 2018****Purpose**

- 1 To consider the adoption of the proposed Navigation Safety Bylaw 2018 (**proposed bylaw**), the revocation of the Navigation Safety Bylaw 2014 and the Waterways and Ramp Fees Bylaw 2014, and the adoption of proposed maritime fees and charges. Approval is also sought for the preparation of a proposal to publicly consult on possible amendments to the proposed bylaw.

Executive Summary

- 2 On 28 November 2017, the Hearings Panel (**panel**) undertook deliberations regarding the submissions received during the consultation process. As the result of careful consideration of all of the submissions and evidence, the panel recommended the adoption of the proposed bylaw with some amendments. The panel has decided not to support an expansion of the speed uplifting in the upper section of the Clutha River.
- 3 Council officers recommend further evaluation of certain matters raised during consultation, which may require that the proposed bylaw is amended in the future. The further consultation proposed would address four topics, including regulation of powered vessels / vessel speeds on the Clutha River, a new rule clarifying safety obligations on river boards (and similar craft), a new rule requiring paddle boarders (and similar craft) to wear a leg leash, and incorporating surfboards into the “vessel” definition.
- 4 Council staff recommend engagement with Central Government to develop infringement regulations for the effective enforcement of the proposed bylaw after adoption.

Recommendation

- 5 That Council:
 1. **Note** the contents of this report.
 2. **Note** the deliberations from the Navigation Safety Bylaw Hearings Panel to make the proposed Navigation Safety Bylaw 2018 (**Attachment C**).
 3. **Adopt** the Proposed Navigation Safety Bylaw 2018 (**Attachment A**) pursuant to section 33M of the Maritime Transport Act 1994 (“MTA”), to take effect on 6 April 2018, with the exception of clause 46 (permission to use or occupy structures or the foreshore), which will take effect from 1 July 2019.

4. **Adopt** the proposed maritime fees and charges in Attachment B pursuant to section 33R of the Maritime Transport Act 1994, to take effect on 6 April 2018.
5. **Revoke** the following bylaws:
 - a. the Navigation Safety Bylaw 2014, to take effect on 6 April 2018; and
 - b. the Waterways and Ramp Fees Bylaw 2014, to take effect on 6 April 2018, with the exception of clauses 15 – 17 and applicable fees for maritime structure permits in Schedule 1, which will be revoked on 1 July 2019.
6. **Direct** Council staff to engage with Central Government to develop infringement regulations to effectively enforce the proposed Navigation Safety Bylaw 2018.
7. **Direct** Council staff to review, consult upon and recommend to Council possible amendments to the proposed Navigation Safety Bylaw 2018 under s156 of the Local Government Act 2002, specifically relating to:
 - a. Options for regulating powered vessels / vessel speeds on the Clutha River (clause 37, Schedule 2 (Table 1) – Clutha River, Maps 8 - 9):
 - b. A new rule requiring river boarding (river boards, river bugs, body boards, and river sledges/hydro speeds) operators to comply with applicable health and safety regulations (Health and Safety in Employment (Adventure Activities) Regulations 2011) (clause 27);
 - c. A new rule requiring stand up paddle boarders, wind surfers, sail boarders and users of similar vessels to wear a leg leash (clause 25); and
 - d. Amending the definition of “vessel” to include surfboards (clause 6).
8. **Direct** Council Officers to report back to Council no later than 28 June 2018.

Prepared by:



Lee Webster
Manager, Regulatory
16 March 2018

Reviewed and Authorised by:



Stewart Burns
GM, Regulatory & Finance
16 March 2018

Background

- 6 On 28 September 2017, Council commenced a special consultative procedure in relation to the proposal to adopt the Navigation Safety Bylaw 2017 (**proposed bylaw**). The proposed bylaw is intended to replace the Navigation Safety Bylaw 2014 (**current bylaw**) and the Waterways and Ramp Fees Bylaw 2014 (**Waterways bylaw**), which are to be revoked as part of the proposal. Council have also consulted with the public regarding proposed maritime fees, that are intended to replace the fees applicable under the current bylaws.

- 7 The Council provided a copy of the proposed bylaw to Maritime New Zealand as required under s33M(1) of the Maritime Transport Act 1994.
- 8 Submissions closed on October 31, 2017. The Council received 314 written submissions regarding the proposal. In total, 285 out of 314 written submissions related to proposed speed uplifting changes on the Clutha River, which was largely opposed by submitters. The Navigation Safety Hearings Panel (panel) was convened over 2 days (15-16 November 2017) for hearings held in Wanaka and Queenstown. The panel heard from 33 submitters regarding the proposed bylaw, including 26 submitters who submitted in relation to the proposed speed uplifting changes on the Clutha River.
- 9 On 28 November 2017, the panel undertook deliberations regarding the submissions received during the consultation process. A summary of those deliberations is outlined in a deliberations report attached (**Attachment C**).

Amendments to proposed bylaw

- 10 The outcome of the deliberations is that the panel recommended that the proposed bylaw be adopted subject to changes to some clauses.
- 11 Amendments of particular note include:
 - a. Rejecting an expansion of the speed uplifting in the Upper Clutha between the Lake Wanaka outlet and Albert Town Bridge (clause 35.1 / Schedule 2);
 - b. Requiring vessels carrying dangerous goods to maintain full written records of dangerous goods to be made available to the Harbourmaster on request, in place of the proposal that vessels give the Harbourmaster 24 hours notice before loading or unloading dangerous goods (clause 30);
 - c. Extend the expiry of approvals under the Waterways Bylaw to 1 July 2019 (clause 61);
 - d. Insert explanation of high speed access lane locations as under the current bylaw (Schedule 2, Table 2);
 - e. Clarifying that “no swimming” signage only takes effect if approved by the Harbourmaster or an enforcement officer (clause 28);
 - f. Updating maps to ensure consistency of colour coding, and inserting explanatory tables under each map with cross references to relevant clauses in proposed bylaw (Schedule 2); and
 - g. Inserting a guide for measuring the length of a yacht (Schedule 3).
- 12 As a result of the submissions received and the hearing panel's deliberations the panel has recommended that the proposed uplifting is not a supportable proposition. The panel was persuaded as to the arguments that a prohibition on all powered vessels was a position worthy of consideration but had advice that this could not be adopted at that time and would require further analysis and review, and would if it were to be a position preferred by Council, need to be further tested by way of a new Statement of Proposal.
- 13 Consequently, Council officers recommend retaining the current rules applicable to the Clutha River under the current bylaw, until further consultation can occur

regarding options for regulating powered vessels / vessel speeds in this area, and a new Statement of Proposal considered by Council. The current bylaw provides for a 5 knot limit between Lake Wanaka outlet and the 5 knot buoy, and a timed speed uplifting between the 5 knot buoy and the Red Bridge.

- 14 The amended bylaw that is proposed for adoption by the Council is attached to this report as **Attachment A**, with proposed amendments indicated in track changes. In addition, all of the maps have been updated to improve consistency of colour coding, and each include a table of cross references to relevant clauses in the proposed bylaw. Maps 8 and 9 have been updated to reflect the recommendation of Council officers to retain the status quo on the Clutha River until further consultation can occur.

Further consultation

- 15 Council Officers recommend that they be directed to prepare a proposal to re-consult on four significant changes to the proposed bylaw, which were not part of the original proposal. These include the following topics:
- a. Options for regulating powered vessels / vessel speeds on the Clutha River (clause 37, Schedule 2 (Table 1) – Clutha River, Maps 8 - 9):
 - b. A new rule requiring river boarding (river boards, river bugs, body boards, and river sledges/hydro speeds) operators to comply with applicable health and safety regulations (Health and Safety in Employment (Adventure Activities) Regulations 2011) (clause 27);
 - c. A new rule requiring stand up paddle boarders, wind surfers, sail boarders and users of similar vessels to wear a leg leash (clause 25); and
 - d. Amending the definition of “vessel” to include surfboards (clause 6).
- 16 Each of these matters will need to be tested subject to the provision of the Act and if adopted by Council be further tested formally by a Statement of Proposal during 2018. Council officers consider that, as a matter of fairness, the public should be given an opportunity to submit on the above proposed amendments to its original proposal.

Comment

- 17 The Council has carried out a special consultative procedure in accordance with the Local Government Act 2002, which has resulted in significant public engagement on the proposed bylaw. The Council has also consulted with Maritime New Zealand regarding the proposed bylaw, as required under s33M(1) of the MTA.
- 18 If the Council adopts the panel's recommendation:
- a. the proposed bylaw will be adopted with the amendments set out in Attachment A;
 - b. the maritime fees will be adopted as outlined in Attachment B;
 - c. Council staff will:
 - i. engage with Central Government to develop infringement regulations; and

- ii. commence the preparation of a further proposal to consult with the public on amendments to specific parts of the proposed bylaw.

Amendments to proposed bylaw

- 19 While a large number of submissions from the public were received, they were focussed on relatively specific parts of the proposed bylaw. Most provisions in the proposed bylaw were not supported or opposed by members of the public. Key topics during consultation included the speed uplifting changes proposed for the Clutha River, and the proposed continuation of restrictions on powered vessels operating on the Kawarau River, below the Arrow River confluence.
- 20 In light of submissions received from the public, the panel has recommended that the proposed bylaw is adopted subject to some changes (refer Attachment A). The amendments to the proposed bylaw are recorded in track changes. The maps have been updated to improve colour coding, and include tables to provide cross-references to relevant rules within the proposed bylaw. These amendments should improve public understanding of the proposed bylaw, as the maps can be used as a tool to provide a quick overview of local rules in a specific area. The maps do not reference other rules in the proposed bylaw that apply across the District.
- 21 In addition to changes recommended by the panel, the amended bylaw includes detailed explanations of the location of High Speed Access Lanes, based on what was set out in the current bylaw. There are also consequential and other minor amendments to the proposed bylaw (which are also highlighted in track changes).
- 22 The Property and Infrastructure Team within Council responsible for managing maritime structures have requested further time to prepare for the implementation of the changes in the proposed bylaw. Accordingly, it is recommended that the current regime in the Waterways Bylaw applicable to maritime structures is continued until 1 July 2019. This will involve a few clauses in the Waterways Bylaw remaining in effect until that time. Otherwise, Council staff consider that the remainder of the proposed bylaw should be brought into effect to as early as 6 April 2018.

Infringement regulations

- 23 In order to effectively enforce the proposed bylaw, Council officers recommend engagement with Central Government to request that infringement regulations are made. This is to ensure the Council and Harbourmaster can issue infringement notices for breaches of the new bylaw. It is hoped that these regulations could be in place as early as next Summer.

Further consultation

- 24 The Council has the power to amend a bylaw under s156 of the Local Government Act 2002. Council staff consider that the changes proposed would require further public consultation. As a result, it is proposed that Council staff prepare a further report to Council to recommend options for further consultation with the public on the four topics identified by the panel.

Options

- 25 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:
- 26 Option 1 Adopt the proposed Navigation Safety Bylaw 2018 (as amended in Attachment A) and proposed maritime fees and charges (Attachment B), revoke the Navigation Safety Bylaw 2014 and Waterways and Ramp Fees Bylaw 2014

Advantages:

- 27 The proposed bylaw will effectively achieve greater consistency with the MTA and applicable maritime rules, particularly Maritime Rule 91 (Navigation Safety). Further, the proposed bylaw substantially reduces duplication, and removes redundant clauses that deal with matters more effectively regulated elsewhere. The modifications proposed by the Harbourmaster to specific rules in the current bylaw are intended to meet changes to the existing maritime risk profile applicable to specific waterways, or water based activities.
- 28 The proposed bylaw will retain the current speed limits along the Clutha River until further public consultation can occur. Council officers will provide a further report for Council consideration regarding a preferred option for regulating powered vessels along the Clutha River for public notification. The revocation of the Waterways bylaw, and incorporation of mooring permit regime within the proposed bylaw will achieve the objective of reducing the complexity of the current waterways permitting system. Council officers consider that these changes will promote better public understanding of the process and costs associated with using Council infrastructure, and will make compliance easier.

Disadvantages:

- 29 There will be some members of the public that may be unhappy about the changes to existing requirements in the current bylaw and the Waterways bylaw. Some submitters may be unhappy that the Council has not made changes to prohibit powered vessels on the Clutha River.
- 30 Option 2 Reject the proposed Navigation Safety Bylaw 2018 and proposed maritime fees and charges

Advantages:

- 31 The current bylaw and Waterways bylaw will continue to have effect at least until the next statutory review of the Waterways bylaw in 2019. The Council will continue to receive fees in relation to the various permits under the waterways permitting system.

Disadvantages:

- 32 The Council will be responsible for implementing the existing provisions of the current bylaw despite the inconsistency of parts of the current bylaw with

maritime rules. The consistency issues will delay the development and passage of updated infringement regulations to facilitate effective enforcement of local navigation safety rules.

- 33 The existing waterways permitting system will continue despite concerns regarding the workability and fairness of some aspects of the system. The Council will need to improve public awareness of the Waterways bylaw. The costs of administering and enforcing a number of different permits and fees will continue to fall on the Council. These matters will remain unresolved, and will still need to be addressed in the next review in 2019.
- 34 A third option was also considered to adopt the proposed bylaw which contained one or more of the four aspects to be considered for further consultation already incorporated within the bylaw.
- 35 However, this option has not been included as this is not considered a viable option and there is a high risk to legal challenge to this, as it denies natural justice to those who might oppose the changes and their right to comment on them.
- 36 This report recommends **Option 1** for the Council to adopt the proposed bylaw with some amendments and the proposed maritime fees and charges (refer Attachment A and B). The proposed bylaw provides for reasonable regulation of navigation safety risks in the District, and will improve consistency with the maritime rules.

Significance and Engagement

- 37 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because there is community interest regarding the safe use of the District's waterways, and the regulation of infrastructure under the waterways permitting system.

Risk

- 38 This matter relates to the operational risk OR005 – Death of a member of the community, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because it directly affects the use of the Council's waterways, ramps and jetties.
- 39 The recommended option considered above mitigates the risk by rationalising the rules regarding the use of waterways in the District, by providing simplified rules to facilitate self-compliance.
- 40 In addition, having identified these new matters and establishing a separate process to consider these, Council are also mitigating the legal risk of addressing these prematurely.

Financial Implications

- 41 It is anticipated there will be additional unbudgeted costs associated with development of a new proposal for further notification, including legal costs of approximately \$10,000.

Council Policies, Strategies and Bylaws

- 42 The following Council policies, strategies and bylaws were considered:
- Waterways and Ramp Fees Bylaw 2014
 - Navigation Safety Bylaw 2014
 - Jetties and Moorings Policy
 - Enforcement and Prosecution Policy
 - Finance Policy
 - 10 Year Plan
 - Council's Operative District Plan and Proposed District Plan
- 43 The new policy is likely to update and supersede the content of the current Jetties and Moorings Policy.
- 44 This matter is included in the Annual Plan under Section 3 – Regulatory Functions and Services.

Local Government Act 2002 Purpose Provisions

- 45 The recommended option:
- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by providing a single bylaw that consolidates and simplifies navigation and waterways regulation;
 - Can be implemented through current funding under the 10-Year Plan and Annual Plan;
 - Is consistent with the Council's plans and policies apart from the Jetties and Moorings Policy, which will require updating if the proposed bylaw is adopted; and
 - Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the Consultation: Community Views and Preferences

Community views and preferences

- 46 The persons who are affected by or interested in this matter are residents and ratepayers of the Queenstown District, iwi, tourists, and any other users of the District's lakes and waterways.
- 47 The original proposal was publicly notified by advertisement in local newspapers between 30 September 2017 and 6 October 2017, including the Otago Daily Times, Southland Times, Mirror and Wanaka Sun. The proposed bylaw, statement of proposal, summary of proposal, a comparison table, and other supporting documents were made available on the Council website, in Council libraries, and in Council offices at 10 Gorge Rd, Queenstown and 47 Ardmore Street, Wanaka. Council also notified submitters who participated in the most

recent bylaw review processes in 2014 and 2016, to advise that a special consultative procedure is underway.

- 48 The Hearings Panel received 314 written submissions regarding the proposed bylaw. It heard from 33 submitters in person, over the course of 2 days (15-16 November 2017) in hearings held in Wanaka and Queenstown. In the course of deliberations, the Hearings Panel has recommended that the proposed bylaw is adopted with some changes. The panel also recommended further consultation on four topics, in order that the public can have their say before any significant change to the proposed bylaw is made.

Legal Considerations and Statutory Responsibilities

- 49 The power to make the proposed bylaw is set out in section 33M of the Maritime Transport Act 1994, which provides that the Council (in consultation with Maritime New Zealand) may make a bylaw for the purposes of ensuring maritime safety to:
- (a) regulate and control the use or management of ships:
 - (b) regulate the placing and maintenance of moorings and maritime facilities:
 - (c) prevent nuisances arising from the use of ships and seaplanes:
 - (d) prevent nuisances arising from the actions of persons and things on or in the water:
 - (e) reserve the use of any waters for specified persons, ships, or seaplanes:
 - (f) in relation to boat races, swimming races, or similar events,—
 - (i) prohibit or regulate the use of ships:
 - (ii) regulate, or authorise the organisers of an event to regulate, the admission of persons to specified areas:
 - (g) regulate and control the use of anchorages:
 - (h) prescribe ship traffic separation and management schemes:
 - (i) specify requirements for the carriage and use of personal flotation devices and buoyancy aids on pleasure craft:
 - (j) require the marking and identification of personal water craft
- 50 The matters outlined in s33M of the MTA are set out in the purpose clause of the proposed bylaw. A navigation safety bylaw is subject to certain constraints in s33M(2) of the MTA, which include that the bylaw cannot be inconsistent with regulations or rules made under the MTA (including Maritime Rules), and it cannot be inconsistent with the Resource Management Act 1991.
- 51 If the Council adopts the recommendation of the Hearings Panel to carry out further consultation on the proposed amendments, Council staff will prepare a statement of proposal relating to the proposed amendments.

Attachments

- A Proposed Navigation Safety Bylaw 2018 (with proposed amendments in track changes)
- B Proposed Maritime Fees and Charges
- C Navigation Safety Bylaw Hearings Panel – Deliberations Report